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Cc: Alex Moon, Land Quality Bureau  
Iowa Department of Natural Resources

From: Iowa Association of Business and Industry (ABI)

Re: Proposed Amendments to IAC 567, Chapter 108  
Beneficial Use Determinations

Date: September 12, 2008

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The Iowa Association of Business and Industry (ABI), representing over 1,300 employers in the state of Iowa, wishes to express its appreciation for your attendance at our August 26<sup>th</sup> Waste Subcommittee Meeting to discuss the proposed changes to IAC 567, Chapter 108. We also appreciate and accept your offer to continue this collaborative discussion and believe that IDNR staff, regulated facilities, and the citizens of Iowa will benefit from our working together on these important issues.

The Department has stated in 567-108.1 that it encourages the beneficial use of solid waste by-products in order to preserve resources, conserve energy, and reduce and eliminate the need to dispose of solid by-products in sanitary landfills. Our members strongly believe that some of the currently proposed changes to Chapter 108, run counter to this encouragement and may unintentionally have negative economic impacts on the businesses and citizens of Iowa without providing a reciprocal environmental benefit.

In summary, some of the major areas we wish to collaborate on include:

**I. Changes to Land Application of Wastes**

As discussed in our August 26<sup>th</sup> meeting, we have no objection to moving jurisdiction for land application of materials to the Iowa Department of Agriculture and Land Stewardship (IDALS) as the rightful agency to determine agronomic value of these materials. We do object to the characterization of land application of waste materials as "disposal" as it is clearly

providing a beneficial agronomic value. We are also concerned that we do not see any current provisions in Chapter 200 and 200A to allow for the land application of wastes. Additionally, the current standards for fertilizers contained in 200 and 200A are designed for commercially produced fertilizers. Although industrial by-products provide cost effective, agronomic value to farmers, these same materials cannot meet the commercial fertilizer standards now contained in Chapter 200 and 200A. Thus, unless these standards are amended concurrently with the land application provisions, there will be widespread financial impacts to not only Iowa's industries (for unnecessary landfill disposal) but also to Iowa's farmers (in increased fertilizer costs). Based on this, we believe that any decision to rescind IAC 567, Chapter 121, titled "Land Application of Wastes" must be accompanied by the publicly noticed, concurrent adoption of reasonable land application provisions and standards in Chapter 200 or 200A. This will help to avoid the disruption of farm and business practices and prevent the unnecessary disposal of this agronomical valuable material in the State's landfills, one of the Department's stated goals.

## **II. Changes to Universally Approved Beneficial Uses**

We appreciate the update to the universally approved beneficial use determinations to facilitate use of materials generated by the steel and electric utility industries. We believe there are additional, generally accepted uses that should be retained or added. Some of these suggested changes are detailed below in *Section IV. Proposed Enhancements and Discussion Items*, for your further consideration.

We understand the explanation offered at our meeting on the 26<sup>th</sup> regarding the striking of the current listing of daily cover as a universally approved beneficial use in an attempt to obtain compliance with disposal project permits by landfill operators; however, we believe that removing this option in attempts to bring landfills into compliance with permit requirements places an unjust burden on the businesses and citizens of Iowa. We believe the Department should continue to encourage and support the use of solid by-products as alternative daily cover and capture the value of keeping these materials out of the waste stream. We believe the Department can find a more appropriate way to encourage permit compliance for landfills that allows beneficial use as daily cover for the businesses and citizens of the State.

We understand that soil amendments will now be regulated by IDALS and therefore stricken from the universally approved beneficial use listing. We reiterate our earlier comment about concurrent provisions in Chapter 200 or 200A before any striking of this option for the businesses and citizens of Iowa.

Most importantly, we strongly believe that fill material should continue to be included as a universally approved beneficial use especially when associated with required reclamation at quarry sites. This use specifically meets the goals of the beneficial use regulations to preserve resources (such as farm land), conserve energy, and reduce and eliminate the need to dispose of solid by-products in sanitary landfills. We provide additional discussion below in regard to the general striking of fill material as a valid beneficial use.

### **III. Changes to Beneficial Fill for Quarry Reclamation**

The changes proposed to 108.6 will preclude the current practice of using waste materials and more specifically coal combustion by-products ("CCB") for beneficial fill at quarry sites. The only reason given by the Department for this change is that "these activities more closely resemble monofill and landfill projects than beneficial use projects." ABI strongly believes that these projects meet the criteria for beneficial use and prohibiting this use would create financial hardships for the businesses and citizens of the State while not providing any thoroughly examined or quantified environmental benefit.

The development of landfills is costly and uses many of the State's natural resources, including land and energy. Iowa has a stated goal of reducing waste streams to landfills (Iowa Code Chapter 455D). This can only be done by removing, from those waste streams, materials that can be used in some manner that is considered preferable to landfilling.

Just as with yard waste in compost and the use of newspaper, glass and aluminum in recycled goods, we believe that CCB has proven to have a productive and valued "second life" as fill material in quarry reclamation projects and should continue to provide this benefit to the citizens and businesses of Iowa. CCB is created in very large volumes by industry and utilities which provide products, services and jobs to the citizens of the State. Developing sufficient monofill or landfill space for this volume of material would be a costly proposition for taxpaying citizens and businesses as well as utilize valuable farmland and create numerous unsightly interruptions to the natural areas and vistas throughout Iowa. Additionally, if CCB is disallowed for use as quarry fill, an alternative fill material would need to be found. With no clear, cost effective alternative identified, this scenario may well force many quarry operators out of business with loss of jobs and tax revenue to the State. Also, if Chapter 103 requirements are imposed on quarry reclamation projects, many existing quarry sites could not meet the siting requirements or design specifications such as the 100 year flood plain requirements. We assert that the beneficial use of CCB as fill material, most specifically in required quarry reclamation projects, should continue for the benefit of all Iowans by reducing the cost of electrical generation and the cost of producing all goods requiring electricity while returning property to a productive use. In addition, this valid beneficial use can be accomplished without damaging the environment or the economic health and natural beauty of the State.

The mission statement of the ABI Environment Committee is to inform its members about state and federal environmental legislation, regulations and policy, and to advocate for environmental legislation and regulations based on sound science in an effort to eliminate burdensome provisions, and to promote common sense practices and legislation that protect and improve the quality of our State's natural resources. CCB for beneficial fill has been used by industry for several years, and ABI is unaware of any adverse human health or environmental affects of this practice. If there are any negative affects or if harm is occurring at a significant number of locations that have followed the requirements set out in §108.6, ABI would appreciate receiving such documentation from the Department. We believe that only a substantial and real threat to the health and environment of our State justifies the economic and land resource losses that the proposed changes would produce.

#### **IV. Proposed Enhancements and Discussion Items:**

In efforts to facilitate further discussion, in addition to the comments above, ABI would like to offer the following specific suggestions for consideration as IDNR further refines and enhances changes to these regulations.

- 1) We encourage the collaboration between IDNR and IDALS regarding beneficial use and agronomic value. We suggest that any reference to land application or soil amendment should indicate that it's beneficial use is in its agronomic value which is governed by IDALS pursuant to a specific citation of Chapter 200 and 200A;
- 2) The fate of pre-existing beneficial use determinations needs to be addressed;
- 3) The proposed definition of "Beneficial use determination" needs to read correctly for those determinations issued by rule, rather than through an application process;
- 4) We suggest that the process for determining the suitability of materials for beneficial use be kept straight forward and simple, similar to the existing process utilizing appropriate chemical/physical criteria;
- 5) We suggest the definition of Coal Combustion By-Products contained in Section 108.3 be expanded to include ash from co firing coal with other alternative fuels such as biomass, TDF, and others as appropriate;
- 6) We suggest additional provisions be developed for the Universally approved beneficial use of CCB similar to those included in electric arc furnace slag such as embankments, road shoulders, pipe and tank backfill, berm construction and other non-hard surfaced industrial construction projects;
- 7) We suggest that use of solid by-products as alternative daily cover should be retained as it serves an economic and useful purpose and reduces a portion of waste entering landfills;
- 8) We suggest that an additional Universally Approved Beneficial Use for Lime produced as a by-product of public water supplies (108.4 (9)) is as a flue gas desulphurization agent; and
- 9) We suggest additional clarity in the revisions to the state authorization process for daily landfill cover (567-108.7) and how it will affect the landfills' current operating permits and the need for revision particularly if foundry sand or other by-products are listed as a Universally approved alternative daily cover.

We thank you for your consideration of our comments and suggestions and look forward to continued positive dialogue with the Department on this matter.